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Elizabeth Miller  
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ATTY DOCKET NO. 10004190-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Jay K. Bass et al.

Group Art Unit: 1639

Serial No.: 09/846,058

Examiner: Maurie Garcia Baker

Filed: 04/30/2001

Title: CHEMICAL ARRAYS WITH ORIENTED ROWS

Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

RESPONSE

The Examiner is thanked for the Action mailed 03/25/03. This Action contained a restriction requirement only in which the Examiner identified the following Groups:

- Group I - claims 1-9 to a *first* method of fabricating;
- Group II - claims 10-17 to a *second* method of fabricating;
- Group III - claims 18, 19 to another method of fabricating;
- Group IV - claims 20-23, 25, 26 to a *first* method of reading; and
- Group V - claim 24 to a *second* method of reading

Applicants hereby elect Group I with traverse in relation to Groups II and III for the reasons discussed below.

It is submitted that Groups I, II, and III should be examined together. M.P.E.P. 802.02 requires that the Examiner first show for related inventions (and the Examiner has not alleged the claimed inventions are not related here) that they are "distinct" under the criteria of 806.05(c) to 806.05(i). The Examiner has not even alleged distinctness as between Groups I, II, and III in the Action, and has not then gone on to make the required showing. For this reason alone the restriction in relation to Groups I, II and III should be withdrawn.

In addition to the foregoing, even if the Examiner had made the requisite showing of distinctness, M.P.E.P. 808.02 further requires the Examiner then go on to show one of: (A) separate classification; (B) separate status in the art when classified together; (C) a different field of search. In paragraph 6 of the Action the Examiner alleges that a different field of search would be required despite the fact that, as pointed out by the Examiner, Groups I, II, and III are classified together. While the Examiner makes this allegation M.P.E.P. 802.02(C) requires more. Specifically, under M.P.E.P. 802.02(C) the Examiner "must show by appropriate explanation..." that "it is necessary to search for one of the distinct subjects in places where no pertinent art to the other subject exists". The Examiner alleges that different searches would be required but has not advanced any explanation as to why this is so in relation to Groups I, II and III. Accordingly, the restriction in relation to Groups I, II, and III should be withdrawn for this additional reason.

In view of the above, Groups I, II, and III (method claims 1-19) should be examined together.

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If the Examiner is of the view that there are any outstanding issues that might be resolved by means of a telephone conference, she is invited to call Gordon Stewart at 650-485-2386.

Respectfully submitted,



Gordon M. Stewart  
Attorney for Applicants  
Reg. No. 30,528

Agilent Technologies, Inc.  
Legal Department, DL429  
IP Administration  
P.O. Box 7599  
Loveland, CO 80537-0599

10004190-1 Response to Restriction



# RESTRICTION ELECTION FACSIMILE TRANSMISSION

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**GROUP 1600**

DATE: April 25, 2003

FROM/ATTORNEY: GORDON M. STEWART

FIRM: AGILENT TECHNOLOGIES, INC.

PAGES, INCLUDING COVERSHEET: 4

PHONE NUMBER: (650) 485-2386

**OFFICIAL**

TO EXAMINER: Maurie Garcia Baker, Ph.D.

ART UNIT: 1639

SERIAL NUMBER: 09/846,058

FAX/TELECOPIER NUMBER: (703) 308-4315

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